

Remarks

Applicants respectfully request reconsideration of the claims in this application as amended above to place them in condition for allowance.

Claims 16, 17, 19 and 29 were rejected under 35 U.S.C §112. These claims have been cancelled.

Claims 1-2, 4-6, 18 and 19 were rejected under 35 U.S.C §112, ¶1 as being non-enabled. Claim 1 has been amended as suggested by the Examiner to indicate that the DNA is transfected into rat or mouse cells and subsequently injected into syngeneic rat or mice. These claims, with the exception of cancelled claim 19, are now in condition for allowance.

Claims 5 and 6 were rejected under 35 U.S.C §112, ¶2 as indefinite because they encompassed the invention of a cancelled claim. Claim 5 was amended. These claims are now in condition for allowance.

Claims 15 and 23 were rejected under 35 U.S.C §102(e) as anticipated by Sazaki et al. teach a DNA sequence of almost 7,000 bases of which only 17 bases align with 17 bases from the nearly 1100 bases disclosed in the present application. Applicants have amended the claim to require that any probe be less than 6000 bp in length. Since Sazaki et. al. teach a sequence of nearly 7000 base pairs, it does not anticipate. To anticipate, a reference must contain every limitation of the claims. *Schering Corp. v. Geneva Pharmaceuticals*, 339 F.3d 1373 (Fed. Cir. 2003.) Nowhere does Sazaki teach a DNA sequence of less than 6000 base pairs. Nor is it inherent or even suggested. Moreover Sazaki et. al. does not teach a “probe.” It is not inherent that any DNA sequence, no matter how large, can be used as a probe. Finally, the Examiner has not shown any evidence that the DNA of Sazaki “is not expressed as an mRNA” as required by the claim. For these reasons, Applicant respectfully requests that this rejection be withdrawn and the claims allowed.

Applicants have made a genuine effort to respond to the Examiner's rejections in advancing the prosecution of this case. Applicants believe all formal and substantive requirements for patentability have been met and that this case is in condition for allowance, which action is respectfully requested.

The Examiner is requested to telephone the undersigned to discuss resolution of any issues necessary to place this case in condition for allowance. Please charge any additional fees or credit any overpayments as the result of the filing of this paper to our Deposit Account No. 02-3978.

Applicants respectfully request the Examiner to telephone Applicants' attorney if it would advance the prosecution of this case. Applicants respectfully request the Examiner to pass this case to issue.

A check in the amount of \$110.00 is enclosed to cover the Petition fee. Please charge any additional fees or credit any overpayments as a result of the filing of this paper to our Deposit Account No. 02-3978 – a duplicate of this paper is enclosed for that purpose.

Respectfully submitted,
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